



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

EUDO CITIZENSHIP OBSERVATORY

NATURALISATION PROCEDURES FOR IMMIGRANTS POLAND

Dorota Pudzianowska

March 2013



European University Institute, Florence
Robert Schuman Centre for Advanced Studies
EUDO Citizenship Observatory

***Naturalisation Procedures for Immigrants
Poland***

Dorota Pudzianowska

March 2013

EUDO Citizenship Observatory
Migration Policy Group
in collaboration with
Robert Schuman Centre for Advanced Studies
Naturalisation Procedures Report, RSCAS/EUDO-CIT-NP 2013/31
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

© 2013 Dorota Pudzianowska

This text may be downloaded only for personal research purposes.
Additional reproduction for other purposes, whether in hard copies or electronically,
requires the consent of the authors.

Requests should be addressed to eucitac@eui.eu

The views expressed in this publication cannot in any circumstances be regarded as
the official position of the European Union

Published in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu/RSCAS/Publications/
www.eui.eu
cadmus.eui.eu

Research for EUDO Citizenship Observatory Reports has been jointly supported by the European Commission grant agreement HOME/2010/EIFX/CA/1774 ACIT and by the British Academy Research Project CITMODES (both projects co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

For information about the project please visit the project website at <http://eudo-citizenship.eu>

Naturalisation Procedures for Immigrants

Poland

Dorota Pudzianowska

1. Introduction

After its transition to democracy in 1989, Poland introduced no new citizenship law for a very long time, and proceeded by the way of amending the law of 1962.¹ These amendments, however, never changed the rule according to which a foreigner may be granted Polish citizenship by the President of the Republic of Poland and at the President's discretion (i.e. conferment or regular naturalisation) if he or she has resided in Poland for a given period of time (with time, residence on the basis of one of the types of permanent residence permit became a requirement).

In 2009, the new law on citizenship was adopted [hereinafter – the ‘2009 law on citizenship’ or the ‘2009 Act on Polish Citizenship’] and entered into force in 2012.² The new law modified the rules governing naturalisation in two important aspects. First of all, the modification concerns issues of procedure – decisions as to granting citizenship to specified categories of foreigners are now administrative decisions issued by the *Voivods* – i.e. the regional representatives of central government – and are governed by relevant rules of procedure, the most important of which are the obligation of justification on the part of the granting authority as well as the competence of judicial review granted to the administrative courts. Secondly, some categories of foreigners benefit from an important reduction of the period of time required after which they can acquire Polish citizenship but will have to meet a number of special requirements of a successful naturalisation (those include the requirements concerning adequate command of the Polish language as well as the condition of demonstrating a source of regular income).

This is not to say that the 2009 Act on Polish Citizenship has abandoned the traditional system of discretionary conferral of citizenship by the President of the Republic. The President still retains powers to naturalise in a procedure which is discretionary. According to the previous law a foreigner may have been granted Polish citizenship by conferment if he or she had resided in Poland for at least five years on the basis of one of three types of permanent residence permit. According to the 2009 law on citizenship the President has the power to grant citizenship in any case he or she wishes (no conditions apply whatsoever). It follows that the conferment procedure becomes entirely discretionary, complementing as it were the system of naturalisation by the way of administrative procedure. The latter, of course, seems to have become the dominant naturalisation procedure as it now concerns any foreigner who meets the relevant criteria whereas previously the procedure applied only to stateless persons or spouses of Polish nationals.

¹ Act on Polish Citizenship, *Journal of Law* 10, 1962, 49.

² Act on Polish Citizenship, *Journal of Law* 2012, 161

This report describes the regular naturalisation procedures that were applied at the end of 2011, but mention is also made of the changes that took place in 2012.

2. Promotion

Nationality is perceived as an aim in itself, the highest form of participation in the society, a privilege that may be bestowed upon an individual seeking to take full participation in the sovereignty of the Nation. Conferring nationality is not considered in terms of the policy of immigration or integration of aliens in the hearts or minds of the decision-makers, academics or the wider public. Accordingly, there is no tradition of thinking about nationality in terms of the rights of the individual. To the contrary, citizenship is considered as the widest status and a nexus between the nation-state and the individual but the thinking of the special status has been strongly influenced by historical preoccupations concerning the formation of the nation-state within a rather poly-ethnic territory after the Great War as well as the preservation of the nation-state as a popular democracy after the World War II. Arguably, the main reason for the continued relevance of this approach is that immigration has gained little relevance in public debate because of the small number of immigrants (c.a. 1%).

Unsurprisingly, there have been no targeted naturalisation campaigns in the past ten years aimed at encouraging applications for Polish nationality. It would therefore be a gross overstatement to say that there is any action (targeted or otherwise) that would encourage eligible applicants to apply. Quite to the contrary, applying for nationality is seen as a purely private matter that concerns the privileges of the individual and does not relate to the wider public interest.

The information made available to prospective citizenship applicants corroborates the observation that naturalisation is not part of any public interest policy. There is some relevant information available in Polish at the websites of the *Voivods* as well as within the official communiqué and publication service (i.e. the *Public Information Bulletin* [pol. - *Biuletyn Informacji Publicznej*]). This information is part and parcel of the publication obligations of public administration. It needs to be observed that this information is made available by the way of mundane administrative obligations and is not in any sense an outreaching and promotional communication tool. They provide moderate and neutral information describing rules and regulations concerning the documentation required and bureaucratic procedures applicable. The information is easy-to-access but is not very accessible to the mind of a reader with no prior training in administrative law jargon. This contrasts starkly with the rare examples of social communication projects. Recently, a flyer has been prepared by two Polish NGOs and the *Voivod* of the *Mazowsze* Region financed by EU and the Polish government. The flyer was made available in Polish, English, Russian, Vietnamese³ and had an informative purpose, explaining the rules in a simplified language structured by an accessible layout. In as much as the physical availability of forms is concerned, the flyers were distributed through the offices of the *Voivod* and made available online.

After the President grants nationality, the citizenship ceremonies take place at the office of the *Voivod*, i.e. the authority charged with the administration of state policy at the regional level. During the ceremony, the *Voivod* hands over a document stating that a person was granted Polish citizenship by the President. This resembles the medal conferring ceremonies or marriage ceremonies and is gauged in the spirit of recognition. Every year,

³ The website of the Polish Migration Forum, consulted on October 19, 2012, at <http://www.forummigracyjne.org/pl/aktualnosci.php?news=291&wid=34>.

there is information on how many foreigners acquired citizenship alongside photos of the ceremony on the webpage of the *Voivod* of the *Mazowsze* Region.

3. Documentation

Applications for naturalisation in the procedure before the President are submitted via *Voivods* (provincial governors) or consuls (for those living abroad). These public authorities issue their opinion in writing and normally pass documents over to the Minister of Internal Affairs who took over the competence of the Head of the Foreigners' Office in 2007. The Minister of Internal Affairs, in turn, gives his/her opinion on the application before passing it over to the President's office. If the President decides that the applications need be passed directly from *Voivods* or consuls to his office, the Minister of Internal Affairs is informed that documents were passed directly to the President's office. This is because *Voivods* and the Minister of Internal Affairs can require the Police, Internal Security Agency, Foreign Intelligence Service and any other relevant authority to provide information concerning the applicant.

The full list of required documents covers the following items that need to be made available in the Polish language (certified translation):

1. a completed application form (handwritten);
2. a certified photocopy of a document confirming identity and nationality of the applicant;
3. CV (handwritten in Polish);
4. a photocopy of a passport;
5. a certified photocopy of a permit of stay;
6. a birth certificate (original);
7. a marriage certificate or other documents certifying marital status (original);
8. information regarding previous applications for Polish citizenship;
9. declaration that the foreigner knows the law on nationality of his/her current state of nationality (this is to avoid situations when people involuntarily lose the other citizenship upon the grant of Polish citizenship);
10. document stating that a person does not have Polish nationality or was released or resigned from it in the past;
11. photos;
12. if applicable – diplomas from Polish schools;
13. documents certifying applicant's income or financial situation.

Apart from information on the required period of residence, applications have to include information on the parents' nationality, on sources of income, on past employment, on the knowledge of the Polish language as well as on the service rendered to Poland (or Polish diaspora organisations etc.).⁴

The applicant gives information on language level in the application form. There are no specified legal means to prove language skills. However, the applicant is required to submit three documents in hand-written Polish, i.e. the application form, the CV, and the statement that he or she knows legal provisions concerning his current nationality. As to the

⁴ Attachment to the Ordinance of the President of the Republic of Poland concerning the procedure in cases of conferment or giving the permit to resign from Polish nationality and specimen certificates and applications, *Journal of Law* 18, 2000, 231.

social integration assessment, it is based on the information provided for in the application form, e.g. the linguistic skills, work performed, etc.

The requirement of renunciation of foreign citizenship can be made by the authorities. The conferment may be conditional upon providing proof of loss of the former citizenship through withdrawal or renunciation. There is no law or binding publically-available guidelines on interpretation of requirement.

In the 2009 law on citizenship, the procedure on naturalisation before the President is described in much more detail than before, which is fortunate because the procedure had been essentially under-regulated under the previous law on nationality. Applications for naturalisation in the procedure before the President are submitted via *Voivods* or consuls (for those living abroad) in person or via mail with certified signature. The application requires the following two main items: a filled-in application form and documents proving the information given in the application form (documents proving identity, the source of income, achievements related to work, political and social activity, documents confirming information about ascendants of a foreigner of Polish nationality (if available), information about having Polish nationality in the past, its loss and the date of acquiring the new nationality, photos). If the application does not meet the legal requirements in this respect, the administrative authority (*Voivod* or consul) addresses the applicant with the requirement to make good on the requirements within 30 days, advising that the application cannot otherwise proceed. These public authorities issue their opinion in writing and normally pass documents to the Minister of Internal Affairs (hereinafter – ‘MIA’).

The MIA is obligated to make a referral to relevant authorities (such as the Chief Constable [pol. – *Komendant Główny Policji*], the Chief of the Internal Security Agency [pol. – *Szef Agencji Bezpieczeństwa Wewnętrznego*]) seeking information that can have important relevance to the procedure concerning the grant of Polish citizenship. Such authorities have to provide relevant information within 30 days of receipt of the request in writing; this time-period can be extended to 3 months in justified cases upon the express request of the authorities to the MIA. The Minister considers the information and issues an opinion on the application before passing it to the President’s Chancellery.

The *Voivod*, the consul and the MIA are obligated to transfer the application directly to the President of the Republic whenever so required by the President and regardless of the stage of the proceedings. The *Voivod* and the consul are obligated to inform the MIA of such a direct transfer of the application.

The President of the Republic grants or refuses to grant citizenship in the form of a resolution. The resolution of the President is transferred to the MIA by the Chief of the President’s Chancellery. The resolution takes immediate effect and the nationality is considered granted on the date of the resolution even though the acquisition of citizenship is formally proved by another document, i.e. the Act of Conferral of Nationality as prepared by the Chief of the President’s Chancellery; the former also prepares the Information Concerning the Refusal of Conferring Nationality. The transfer of both kinds of documents to the applicant is governed by the Act on Administrative Procedure,⁵ which is important because the documents have to retrace the application procedure. The Chief of the President’s Chancellery transmits the Act of Conferral or the Information Concerning the Refusal of

⁵ Act on Administrative Procedure, *Journal of Law* 30, 1960, 168.

Conferring Nationality to the applicant through relevant authorities, i.e. through the Minister for International Affairs and the consul where the application had been forwarded by the consul, and through the *Voivod* where the application had been forwarded by the *Voivod*. The Minister for International Affairs has to inform immediately the applicant and transmit the documents to the applicant through the Consul. The *Voivod* only transmits the documents to the applicant. The Act of Conferral of Nationality as well as the Information Concerning the Refusal of Conferring Nationality contain the following formal elements: the information of the contents of the decision of the President, the date of the decision and the call-number of the decision, the credentials of the applicant (the names and surname, the date and place of birth, the names of the father and the mother), the identification of the date and the authority that prepared the Act or the Information Concerning the Refusal of Nationality.

Since the 2009 Law on citizenship came into force in 2012, the competence in ordinary naturalisation has been widened on *Voivods* under the heading of ‘acknowledgment’ [pol. – *uznanie za obywatela*]. The *Voivod*’s power to grant citizenship is widened because the ‘acknowledgment of citizenship’ procedure is transformed so as to apply not only to stateless persons and spouses of Polish nationals but to all categories of foreigners who meet relevant criteria. What this means is that guarantees of judicial review of decisions will be extended to certain foreigners whereas before they only applied to stateless persons or spouses of Polish nationals. Moreover, the regulations are phrased in a way which suggests that there is little room for a discretionary decision.

Foreigners who fulfill the following conditions and do not pose a threat to the country’s internal security, defense or public order will be granted citizenship by the *Voivod* under Article 30 of the 2009 Act on Polish Citizenship:

- those who have resided in an uninterrupted and legal way on the Polish territory for at least ten years, are in possession (at the moment of application) of one of three types of permanent residence permit, who have a stable and regular income and a legal title to inhabitable premises, and who know the Polish language;
- those who have resided in an uninterrupted way on the Polish territory for at least three years on the basis of one of three types of permanent residence permit, who have a stable and regular income and a legal title to inhabitable premises, and who know the Polish language;
- those who have resided in an uninterrupted way on the Polish territory for at least two years on the basis of one of three types of permanent residence permit, who have been married to the Polish citizen for at least three years, and who know the Polish language;
- those who have resided in an uninterrupted way on the Polish territory for at least two years on the basis of one of three types of permanent residence permit and who are stateless, and who know the Polish language;
- those who have resided in an uninterrupted way on Polish territory for at least two years on the basis of a residence permit that was acquired in connection with refugee status granted in Poland and who know the Polish language;
- certain categories of foreigners with Polish origin.

The knowledge of the Polish language is a condition for all categories of foreigners listed above. Those exempted are only underage foreigners [pol. – *małoletni cudzoziemiec*] of Polish origin. Applicant can use many legal means to prove language knowledge. It can be proved by a certificate in Polish as a foreign language, which can be obtained after passing

the exam before the special commission - State Commission for the Certification of Proficiency in Polish as a Foreign Language [pol. - *Państwowa Komisja Poświadczania Znajomości Języka Polskiego jako Obcego*; hereinafter – State Commission].⁶ Exams (in two parts – written and oral) are organised at three levels – basic (B1), medium (B2) and advanced (C2). The 2009 law on citizenship does not specify language level required which means that B1 level is sufficient. An applicant has to pay for an exam as well as for the certificate. The exam fee is decided by the President of the State Commission. At this moment it is 60 EUR for B1 level exam. Successful candidates are asked to pay an additional 20 EUR for the certificate.⁷ The knowledge of Polish can also be proved by the final school report or the final school report from the school abroad with Polish as a teaching language.

4. Discretion

The tradition is that nationality is a privilege that can be given and not an individual right. This is reflected in the procedure where the President is responsible for conferring citizenship where the decisions are not subject to any form of review. The President acts in this respect as the representative of the Nation in exercising the sovereign Presidential prerogative⁸ that suggests monarchic connotations.

The power to grant citizenship is considered a constitutional prerogative of the President of the Republic of Poland. The decision of the President is entirely discretionary since the criteria are unclear. The President also does not have to grant citizenship even if all of the conditions have been fulfilled. The President's decision may even be called arbitrary in the sense that the decisions do not have to be justified and there is no judicial review available. In 'particularly justified cases' the President can disregard the residence requirement, but this only applies to achievement-based acquisition of citizenship. From all of these provisions, it is evident that the conferment procedure cannot be regarded as a legal entitlement and is instead based on the exercise of sovereign power by the head of state.

It is important to note that the coming into force of the 2009 law on citizenship which widened the competence of *Voivods* in ordinary naturalisation under the heading of 'acknowledgment procedure' importantly enhances the rule of law credentials of the Polish law on citizenship. The regulations are phrased in a way which suggests that possibilities of discretion are slim: if the conditions as under the statute are fulfilled by a foreigner, the *Voivod* is obliged to grant citizenship, i.e. acknowledge that the applicant is a citizen as the law considers the applicant a citizen upon meeting the statutory requirements. It is important to stress, however, that the *Voivod* retains important powers to refuse the granting of citizenship on grounds of national security. Even if the foreigner fulfils the conditions he or she can be denied citizenship if the *Voivod* decides he or she poses a threat to the country's internal security, defense or public order. In some cases, on the other hand, the *Voivod* does not have to justify negative decision when it poses a threat to the country's safety, defense or public order. The procedure before the *Voivod* is regulated by the Act on Administrative Procedure and thus there are important procedural guarantees including the right to be informed, take actively part in the proceedings and to be heard by the deciding authority during the procedure.

⁶ This is regulated by the Language Act, *Journal of Law* 90, 2000, 999 and the Regulation of the Minister of National Education and Sports on exams in Polish as a foreign language, *Journal of Law* 191, 2003, 1871.

⁷ Information in English available at www.certyfikatpolski.pl.

⁸ Cf. the resolution of the Highest Administrative Court of 9 November 1998, OPD 4/ 98, ONSA 1999, book 1, item 6.

5. Bureaucracy

There is no regulation on maximum length of procedure before the President. It takes on average 2-3 years.

As to the ‘acknowledgement’ procedure before the *Voivod* in cases of acknowledgment as regulated under 2009 law on citizenship, it is regulated by the Act on Administrative Procedure and thus the *Voivod* can take one month, and exceptionally two months, to take a decision. Since the *Voivod* is obligated to make an appropriate referral to the Police, Internal Security Agency or other relevant authorities for information concerning the problem if the acquisition of Polish citizenship by the foreigner does not pose any danger to national defense, the security of the state or public security and public order, the procedure will be stayed for the period of the referral and such authorities can take one month – and 3 months in special cases – to respond.

6. Review – how strong is judicial oversight of the procedure?

The resolution of the President is final. It is not reasoned and no review is available. It does not change with the 2009 law on citizenship.

In the ‘acknowledgement’ procedure before *Voivods*, the rules of administrative procedure apply. Therefore, reasoned decisions are issued and administrative as well as judicial review is available. As a consequence of both administrative and judicial review, the decision can be changed. The review covers both the substantive and the procedural aspect. The applicant has to launch an appeal to the 2nd instance administrative authority within 14 days after the decision is notified. After the administrative review is finished, there is a time limit of 30 days to bring an appeal to the regional administrative court (pol. – *Wojewódzki Sąd Administracyjny*) and there is possibility within 30 days to lodge a complaint to the Supreme Administrative Court [pol. – *Naczelny Sąd Administracyjny*] although specific requirements need to be met in the latter case.

